IN THE MATTER OF THE ARBITRATION BETWEEN

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 117 & LOCAL 313, UNION, and UNFI/SUPERVALU, INC., EMPLOYER.	ARBITRATOR'S OPINION AND AWARD FACILITY RELOCATION TO CENTRALIA GRIEVANCE FMCS NO. 190430-06670

BEFORE: JOSEPH W. DUFFY
ARBITRATOR
PO BOX 12217
SEATTLE, WA 98102

REPRESENTING
THE UNION: TRACEY A. THOMPSON
MICHAEL DAY
TEAMSTERS LOCAL UNION 117

DANIELLE FRANCO-MALONE
BARNARD IGLITZIN & LAVITT, LLP

REPRESENTING
THE EMPLOYER: JONATHAN O. LEVINE
ADAM P. TUZZO
LITTLER
111 E. KILBOURN AVE., SUITE 1000
MILWAUKEE, WI 53202

HEARING HELD: AUGUST 6 & 7, 2019
SEATAC, WA

OPINION

Introduction

International Brotherhood of Teamsters Local 117 and Local 313[1] ("Union") serve as exclusive bargaining representatives for workers employed by United Natural Foods, Inc. ("Employer" or "UNFI"). The Union and the Employer ("Parties") submitted this dispute to arbitration under the terms of their July 15, 2018 –July 17, 2021 collective bargaining agreement ("Agreement"), copies of which they introduced into the record as a joint exhibit. (J3) In addition, the Parties entered into a pre-arbitration agreement which set certain terms and conditions for the conduct of this arbitration. (J1; TR6:23-TR10:23) The Parties selected me to arbitrate this dispute from a panel of arbitrators provided by the Federal Mediation and Conciliation Service.

This arbitration involves a grievance filed by the Union related to the Employer's UNFI Supply Chain, Pacific Northwest restructuring plans and an alleged violation of Article 1 of the Agreement. (U9)

The hearing took place at the Hilton Seattle Airport on August 6 & 7, 2019. As referenced in the Pre-Arbitration Agreement, the Employer has raised issues of arbitrability. The Parties agreed to proceed with a hearing on both arbitrability and the merits, with the understanding that I will consider the arbitrability issue first when making my decision and then proceed to the merits only if I determine that I have jurisdiction. (TR10:24-TR11:9) The Parties also agreed that I should retain jurisdiction following issuance of the award to aid in the implementation of the remedy, if a remedy is awarded. (TR12:12-16)

The hearing proceeded in an orderly manner. The attorneys did an excellent job of presenting the respective cases. Both Parties had a full opportunity to call witnesses, to submit documents into evidence and to make arguments. Witnesses were sworn under oath and subject to cross-examination by the opposing Party. A court reporter transcribed the hearing and made copies of the transcript available to the Parties and to me.

The Parties submitted nine joint exhibits (J1-J9), eighteen Employer exhibits (C1-C18) and thirty-nine Union exhibits (U1-U11, U13-U40) into the record. (TR12:20-TR13:11; TR298:12-22) A total of five witnesses testified at the hearing. They were: Local 117 Principal Officer/Secretary Treasurer John Scearcy, Local 313 Principal Officer/Secretary Treasurer Bob

[1] In this Opinion, most of the focus is on Local 117, but the decision applies to both Local 117 and Local 313.

McDonald, retired Director of the Teamsters Warehouse Division and former President of Joint Council 28 as well as other Union offices John Williams, retired Local 117 Business Agent Tom Gallwas and Arbitrator and former Allied Employers Attorney Michael Merrill.

At the conclusion of the testimony, the Parties elected to submit post hearing briefs to me and to each other on September 6, 2019. (TR298:6-8) I received the briefs on September 6, 2019 and then closed the record.

Issue for Decision

At the hearing, the Parties did not agree on an issue statement, so they left it to me to frame the issue based on their proposals and the record. (TR12:7-10)

The Union proposed the following:

> 1. What contractual obligations does the Employer owe its current bargaining unit employees who are employed at the Tacoma facility and are covered by a collective bargaining agreement that contains movement-of-facility language?
>
> 2. Did the Employer breach the Parties' collective bargaining agreement when it unequivocally stated that it would not comply with Section 1.01.2 and when it did not allow Tacoma facility bargaining unit employees to transfer to the Centralia facility without loss of wages, benefits and seniority in accordance with Section 1.01.2?
>
> 3. If the Employer breached the Agreement, what is the appropriate remedy? (TR11:10-25)

The Employer proposed the following:

1. Is the grievance substantively arbitrable?
2. If so, did the Employer violate Section 1.01.2 of the Agreement? (TR12:3-6)

I have framed the issue as follows:

1. Is the grievance substantively arbitrable?
2. If so, did the Employer violate Section 1.01.2 of the Agreement?
3. If so, what is the appropriate remedy?

Background

In June 2017, SuperValu, a wholesale grocery distribution company acquired Unified Grocers, another wholesale grocery distribution company. In October 2018, United Natural Foods, Inc. ("UNFI"), a national wholesale grocery distribution company, acquired SuperValu

through a stock purchase, as a result of which, UNFI acquired all assets and liabilities of SuperValu. After the acquisition, UNFI's Pacific Northwest supply chain included distribution centers in Portland, Oregon, and Tacoma, Auburn and Ridgefield, WA. (C6)

UNFI recognized the Unions and agreed to comply with the terms of the collective bargaining agreements for the remainder of their terms. (U3) Locals 117 and 313 have had a collective bargaining relationship with SuperValu for more than forty years, either directly with SuperValu or through a multi-employer agreement. SuperValu previously has been through a number of mergers and acquisitions over the years. (TR19:11-24)

On February 5, 2019, UNFI announced a plan to consolidate the distribution centers by moving the Tacoma and Portland facilities to a newly constructed facility in Centralia, Washington, which is about 55 miles from Tacoma and about 90 miles from Portland. (U7) The new distribution center will eventually employ approximately 500 hourly warehouse workers by early 2020.

Teamster Locals 162, 206, and 305 represent approximately 253 warehouse workers at the Portland facility. (C2) Local 117 represents approximately 263 hourly warehouse workers at the Tacoma facility.

This dispute involves Local 117 and Local 313 on behalf of the Tacoma facility employees. In discussions between the Union and the Employer that occurred following the announcement of the move to Centralia, Local 117 argued that under Section 1.01.2 of the Agreement, entitled "Movement of Existing Facility", the terms of the Agreement shall apply with respect to the new facility and the employees working at Tacoma shall be entitled to the opportunity to work at the new facility under the same terms and conditions and without any loss of seniority or other contractual rights or benefits. The Employer responded that Article 1 of the Agreement, including Section 1.01.2, does not apply to the move to Centralia. (U5-U11)

The Union filed a grievance, which went to a Board of Adjustment. When the Parties could not resolve the dispute in the grievance procedure, this arbitration followed. In discussions between the Parties that preceded the arbitration, the Parties entered into an Arbitration Agreement that establishes certain terms and conditions for this arbitration. (J1)

The Arbitration Agreement

On June 4, 2019, the Parties entered into the following agreement:

> This Agreement is made by and between the Parties. For purposes of this Agreement, the Parties are: United Natural Foods, Inc. on behalf of and for the benefit of its subsidiaries and affiliates (collectively "UNFI") and Teamsters Local 117 and 313 (the "Union").
>
> On May 25, 2019, pursuant to their collective bargaining agreements ("CBAs "), a Board of Adjustment hearing was held.
>
> The Board heard grievances seeking a declaration that Article 1, Section 1.01.2 of the Local 117 CBA (and Section 1.1.2 of the Local 313 CBA) applies to the Company's consolidation of Pacific Northwest supply chain operations in Centralia, WA.
>
> The Company denied the grievances on the merits and on various other grounds including without limitation, that the grievances are not arbitrable.
>
> The Board, composed of two representatives chosen by the Company and two representatives chosen by the Union, failed to agree on a disposition of the grievance.
>
> Pursuant to the CBAs, the Unions have requested to submit the grievances to arbitration.
>
> In exchange for the Company's agreement to this request, the Unions have agreed to complete their responses to the Company's pending information requests in a timely manner and further agreed that the Company may proceed to arbitration without prejudice to and without waiving any rights, arguments, and defenses it has or may have regarding the merits and/or arbitrability of the grievances.
>
> The Parties agree to strike arbitrators by a date no later than June 4, 2019. (J1)

Stipulation

At the hearing, the Parties entered into the following stipulation:

> The Parties stipulate that Ryan Blackhurst is a regional vice-president of operations for UNFI. His duties include responsibility for the success of distribution operations in the Pacific region, which includes 17 distribution centers in Washington, Oregon and California.
>
> Mr. Blackhurst reports to Mario Adami, senior vice-president of operations for UNFI. Mr. Blackhurst was informed of and assigned operational responsibility for implementing UNFI's decision to consolidate Portland and Tacoma into Centralia on or about the last week of January 2019, which is the

first time he became aware of the decision. Mr. Blackhurst was not involved in the decision making process.

The consolidation of Portland and Tacoma into Centralia—into the Centralia distribution center is currently being conducted as a complete consolidation of operations.

In Centralia there is a single classification of warehouse worker called, quote, general warehouse, and employees are being trained on multiple functions, including forklift, selection, loading, and receiving.

Employees hired in Centralia will have the same managers, regardless of whether they previously worked in Portland or Tacoma. Employees hired in Centralia will have the same supervisors, regardless of whether they previously worked in Portland or Tacoma. Employees hired in Centralia will be performing the same warehouse work, regardless of whether they previously worked in Portland or Tacoma.

The Centralia warehouse operations will not be divided in any fashion based on whether a customer or employee came from Tacoma, Portland, or was new to the Centralia operation. The Centralia distribution center will include a produce operation that did not exist in Tacoma.

This is the complete stipulation of the Parties. (TR299:8-TR301:8)

The Agreement

ARTICLE 1 – RECOGNITION AND BARGAINING UNIT

1.01 Union Recognition: SuperValu, Inc. and Teamsters Local Union No. 117, affiliated with the International Brotherhood of Teamsters, as the sole and exclusive collective bargaining agency for all employees of the Employer in the classifications of work covered by this Agreement within the jurisdiction of the Union. In the event the Employer establishes a wholesale grocery operation within the jurisdiction of the Union where presently only a cash and carry operation is covered, the Employer agrees to recognize the Union and the parties shall negotiate a separate Labor Agreement.

> 1.01.1 Authorization Card Recognition: The Employer signatory to this Agreement, hereby agrees that in the event a new wholesale grocery operation is established within the territorial jurisdiction of any local union signatory to this Agreement, and if any of the local unions present signed authorization cards from a majority of the employees in an appropriate bargaining unit, the affected employer will thereupon recognize the petitioning local union as the collective bargaining representative of such employees and will promptly meet with the local union to engage in collective bargaining regarding terms and conditions of employment for a separate labor agreement.
>
> Any dispute concerning the interpretation or enforcement of this provision will be resolved exclusively by referring it to the arbitration procedure of this Agreement.

1.01.2 Movement of Existing Facility: In the event that the Employer moves an existing facility to any location within the jurisdiction of Joint Council of Teamsters No. 28, as currently defined excluding current facilities under the jurisdiction of and the service area of Teamsters Local Union No. 690, the terms of this contract shall continue to apply with respect to the new facility. In addition, all employees working under the terms of this Agreement at the old facility shall be afforded the opportunity to work at the new facility under the same terms and conditions and without any loss of seniority or other contractual rights or benefits. The designated Union will be required to show a majority representation in accordance with controlling law. In addition, the parties agree to enter into effects bargaining in accordance with controlling law regarding the impact on employees of the movement of an existing facility.

1.02 Employer Recognition: Teamsters Local Union No. 117, affiliated with the International Brotherhood of Teamsters, for and on behalf of its members, hereby recognize, during the term of this Agreement, SuperValu, Inc. (J3, p. 1)

ARTICLE 16 – TRANSFER OF RIGHTS

In the event that an Employer absorbs, purchases, or merges with another Company signatory to this Agreement within the jurisdictional area of the Union, all wages and vacation privileges shall continue and all other benefits under this Agreement will prevail. Further, if the Employer absorbs, purchases, or merges with a company in the Wholesale Grocery Industry within the jurisdictional area of the Union, it shall be considered a new operation and the provisions of Section 1.01 shall apply. (J3, p.17)

ARTICLE 23 – SETTLEMENT OF DISPUTES

23.01 Exclusive Procedure: The right to process and settle grievances is wholly, to the exclusion of any other means available, dependent upon the provisions of this Article. The Union and the Employer agree to act promptly and fairly in all grievances.

23.05 Limited Powers: A Board or Arbitrator shall have no power to add to or subtract from or to disregard, modify or otherwise alter any terms of this or any other agreement(s) between the Union and Employer or to negotiate new agreements. Board and/or Arbitrators powers are limited to interpretations of and a decision concerning appropriate application of the terms of this Agreement or other existing pertinent agreement(s), if any.

23.13 Arbitrator's Decision: The arbitrator shall render his/her final typewritten decision which shall be dated and which shall include orderly and concise

> Findings of Fact within thirty (30) days of the close of the hearing or if either or both parties submit post hearing brief(s), within thirty (30) days after receiving the post hearing brief(s), provided further that such brief(s) are to be submitted within thirty (30) days of the close of the hearing or sooner if mutually agreed. Failure to do so shall mean forfeiture of the arbitration fee. Copies of the final decision shall, in duplicate, be furnished to the Union and the Employer. (J3, p.19)

The Grievance

The grievance that the Union filed, dated March 26, 2019, describes the dispute as follows:

> On March 18, 2019 the Union and the Employer met to discuss the UNFI Supply Chain, Pacific Northwest restructuring plans. Specifically, the Employer has initiated its plan to move multiple existing operations and facilities, including SuperValu Tacoma, into a newly constructed facility in Centralia, WA.
>
> At this meeting the Employer confirmed that the work historically performed by members of the Teamsters Local Union No. 117 at the Tacoma facility(s) and the Tacoma facility(s) itself will be moved and added that the official position of the Employer was that Article 1 of the parties" Collective Bargaining Agreement covering the employees and work at the SuperValu Tacoma facility(s) was not applicable and would not be honored.
>
> The Union protests the Employer's decision to violate the parties' Collective Bargaining Agreement including, but not limited to, Article 1 of that Agreement... (U9 and see U11)

Discussion

The Employer contends that this dispute is not arbitrable. Ordinarily, when a party raises an arbitrability issue, I address the arbitrability issue separately and then, if appropriate, proceed to the merits. (TR10:24-TR11:9) In this case, the arbitrability issue and the merits are so intertwined that I have to discuss the issues together in order to provide a clear explanation for my final ruling.

The Parties provided excellent briefs that laid out their positions clearly and in depth. In the most basic terms, this dispute is either about contractual rights, as the Union contends, or is a dispute about union representation, as the Employer contends. The Employer further contends that as a union representation issue, this matter falls within the exclusive jurisdiction of the NLRB, which means the dispute is not arbitrable.

Positions of the Parties[2]

The following briefly summarizes the positions of the Parties.

The Union's Position

The Union contends that arbitrators have the power to enforce vested contractual rights that arose while the contract was in effect even after the expiration of the contract or the cessation of work performed at the facility where the collective bargaining agreement applied. In the present case, the existing facility will close and the new facility will be operational during the term of the Agreement (July 15, 2018 –July 17, 2021). The Union contends that the Tacoma employees were promised certain benefits in the Agreement. Specifically, they were promised a job at the new facility under the same terms and conditions of employment that they had in Tacoma.

The Union argues that the facts of this case present a dispute that is primarily contractual and not primarily representational. The Union contends that in this proceeding it only intends to enforce the rights granted to the employees under Section 1.01.2 to work at the new facility under the same terms and conditions as they had in Tacoma. The Union contends that it has never demanded recognition as the exclusive representative of employees in Centralia. Therefore, in this arbitration, under the Union's view of the facts, I am not being asked to decide a representational issue.

The Union argues that the present case differs from the *Safeway* case relied on by the Employer, because in that case the union asserted representational rights at the newly merged facility. The Union asserts that here it attempts only to enforce the rights that the Tacoma employees had already secured in the Agreement, not to obtain recognition.

The Union contends that the Employer's contention that the employees at the Tacoma facility must constitute a majority in Centralia before the first two sentences of Section 1.01.2 apply does not make sense. The employees from the Tacoma facility must first be working in Centralia before they could demonstrate majority status. Therefore, in the Agreement, the Parties placed the majority status provision in the third sentence after the first two sentences that give the employees the opportunity to work at the new facility

[2] The arguments made by the Parties have been considered in reaching the decision in this case even if not discussed herein.

In addition, the Union argues that the Agreement provides in Article 23.01: "The right to process and settle grievances is wholly, to the exclusion of any other means available, dependent upon the provisions of this Article." In other words, the Parties agreed that arbitration is the sole means of dispute resolution.

The Employer's Position

The Employer contends that this case is a representation case subject to NLRB jurisdiction disguised as a grievance.

The Employer asserts that Section 1.01.1 of the Agreement does not apply to this situation because Centralia is not within the territorial jurisdiction of the Union, since it is not in King or Pierce County. (TR122:3-13) The Employer asserts that Section 1.01.2 applies only to the relocation of a single facility and does not apply to a consolidation that creates a new operation. In addition, the Employer argues that even if Section 1.01.2 applied, the Union must first show "majority representation in accordance with controlling law."

The Employer asserts that it has advised the Union of the Employer's willingness to hire Tacoma employees. A letter from the Employer to Mr. Sceary, dated June 19, 2019 includes the following:

> UNFI is interested in hiring associates from all affected distribution centers—Tacoma, Portland and Auburn—in Centralia. We shared this with you during our March 18 meeting and subsequent thereto, as well as with our associates. We will not turn down any associate who expresses interest and satisfactorily completes the application process.
>
> ....
>
> As we have discussed, the current hiring in Centralia is based on our start-up needs. We will be adding hundreds of additional associates in the future and we would like as many of those associates as possible to come from Tacoma, Portland, and Auburn. That is the reason we have been asking Local 117 and our other unions to meet, and have been disappointed by their unwillingness to do so for months.
>
> Sitting down quickly should allow us to work out initial terms of employment that make sense for experienced associates coming from Tacoma, Portland, and Auburn, stabilize operations, and provide the clarity our associates continue to ask for. The effects bargaining proposal we made on March 18, which Local 117 rejected, also included allowing associates hired in Centralia to maintain their sick leave and accrued vacation balances at Centralia. Without waiving our position regarding Local 117's unreasonable delay of the process, this offer still stands. (C12 and see C1 and C15)

The Employer asserts that the separate identities of the Tacoma and Portland distribution centers have been completely eliminated and replaced by a new "massive, modern, integrated" distribution center in Centralia.

The Employer places substantial reliance on the *Safeway* decision (*Teamsters Local 206,* 368 NLRB No. 15 (2019)).

The Contract Provision in Dispute

As an arbitrator acting under the terms of the Agreement, my task is limited to interpretations of and a decision concerning appropriate application of the terms of this Agreement. (J3, Section 23.05)

On the issue of contractual rights, the primary focus is on three sentences from Section 1.01.2 of the Agreement.[3] Those sentences read as follows:

> In the event that the Employer moves an existing facility to any location within the jurisdiction of Joint Council of Teamsters No. 28, as currently defined excluding current facilities under the jurisdiction of and the service area of Teamsters Local Union No. 690, the terms of this contract shall continue to apply with respect to the new facility. In addition, all employees working under the terms of this Agreement at the old facility shall be afforded the opportunity to work at the new facility under the same terms and conditions and without any loss of seniority or other contractual rights or benefits. The designated Union will be required to show a majority representation in accordance with controlling law.

Centralia is within the jurisdiction of Joint Council 28, which covers most of Washington State as well as the State of Alaska and northern Idaho. (U11, TR182:11-TR183:6) Local 690 is a Spokane, WA local and does not have jurisdiction in Centralia. (TR219:21-25; TR225:2-20)

In trying to understand the intent of the Parties, an initial difficulty presented by the language of Section 1.01.2 arises because of the apparent conflict between the first two sentences and the third sentence. The first two sentences appear to grant clear rights to existing employees that "shall" apply. The third sentence seems to add a condition that negates or limits the rights and benefits provided by the first two sentences. The question arises why experienced negotiators on both sides would write the provision this way on a topic of substantial importance to both Parties. If the agreement reached by the Parties required that the Union must, as a pre-condition, show majority support in accordance with controlling law, why include the first two

[3] See TR226:9-TR227:13 and TR292:25-TR293:20 and TR296:11-TR297:13 regarding the 4th sentence of Section 1.01.2.

sentences at all? If the intent of the Parties was to limit the rights granted in the first two sentences, why put the majority support statement after the first two sentences rather than before them? Why provide in the first two sentences that rights and benefits "shall" apply and not make clear in those sentences that the rights and benefits are conditioned on showing majority support? The overriding question is what were the Parties trying to accomplish with this provision?

The Employer contends that application of commonly accepted principles of contract interpretation establishes that the Union's proposed interpretation of Section 1.01.2 cannot be adopted. The Employer contends that the third sentence of Section 1.01.2 clearly establishes a pre-condition. The Union must establish majority status before the first two sentences can take effect. The Employer argues that the only way that the Union can achieve what it seeks here is to "either read the second sentence of Section 1.01.2 in total isolation, switch the placement of the second and third sentences, or outright combine the first and third sentences." (Brief, p. 30) The Employer argues correctly that rewriting the Agreement is beyond the authority of an arbitrator acting under the Agreement and is not acceptable when applying contract interpretation principles. (J3, Section 23.05, p. 19)

As I noted, however, the order of the sentences in Section 1.01.2 and the language used do not give a completely clear picture of what the Parties intended.

The Union contends that the first two sentences and the third sentence can operate independently. The Union argues that the first two sentences allow the employees to follow the work to Centralia and then to work under the same terms of employment they had in Tacoma until the question of representation is resolved.

The Elkouri textbook includes the following related to interpreting contracts in light of the purpose:

> Judicial doctrine recorded in the *Restatement (Second) of Contracts* holds that when the principal purpose that the parties intended to be served by a provision can be ascertained, the purpose is to be given great weight in interpreting the words of the provision. Arbitrators agree that an interpretation in tune with the purpose of a provision is to be favored over one that conflicts with it. (*Elkouri & Elkouri, How Arbitration Works, 7th Ed.*, p. 9-33 (ABA; 2012))

The textbook cites *Globe Newspaper Company*, 74LA1261, 1268 (1980), which includes the following:

> To determine the mutual intention of the parties from the language they used, that language should be construed in the light of the purpose clearly sought to be accomplished giving consideration to the negotiations leading to the adoption of that language.

Bargaining History

In this case, we have testimony concerning bargaining history from negotiators for both sides and that testimony provides assistance in understanding the purpose of Article 1 and the Section in dispute here, Section 1.01.2.

Mr. Williams testified at some length about the 1994 and 1999 negotiations and the Union's objectives concerning security for the bargaining unit in the event a facility relocated. One of the motivating factors for the Union related to Safeway's move of the Tracy California distribution center and the labor dispute that developed over that move. The Union did not want to have a similar experience in the Northwest to the California experience. (TR237:25-TR238:5) He testified that the Union wanted language in the Agreement:

> ...that afforded the employees a – an opportunity to go to work in a new facility, you know, even if the facility was geographically distant from the facility that they currently worked in. (TR214:3-8)

> And so we wanted to make sure that our members had the right to transfer, and that they would be able to move with the work, is the term we used. (TR214:22-25; see also TR248:24-TR252:13)

Mr. Merrill, who served as a negotiator for the Employer in 1994 and 1999, agreed in his testimony that the Union's stated objective in the negotiation of Section 1.01.2 was to be able to follow the work to a new location. (TR305:6-25)

Mr. Williams testified that the Union wanted to specify the jurisdiction of Joint Council 28 rather than the jurisdiction of a local union to anticipate the fact that employers may want to move from the Seattle area because of rising real estate values and the need to update antiquated facilities. He testified that the Union understood that Centralia/Chehalis would be a logistically feasible place to relocate. (TR214:3-24) Centralia is beyond the jurisdiction limits of Local 117 but is within the jurisdiction of Joint Council 28.

Mr. Williams described another of the Union's objectives in the negotiation of Section 1.01.2 as follows:

> That in the movement of—to a new facility, that in the transitional phase, that the terms of the agreement apply. And that was that, even though there may be some transition that leads to an ultimate agreement, if you will, that there needed to be the adherence to the terms and conditions of this agreement applying to those employees who transferred and/or otherwise hired at the facility opened as a result of the movement of the facility.
>
> Sometimes closures don't happen all at once, and there's a transition period, and so we wanted to make sure that the terms of the agreement applied. (TR215:4-15)

Mr. Williams testified he did not have a specific recollection of the discussions regarding the third sentence of Section 1.01.2, which the Employer proposed. (TR220:6-16; TR243:22-244:3) He testified that the Union sought legal advice and concluded that the first two sentences of Section 1.01.2 complied with the law and would allow the terms of the existing contract to be applied at the new facility. (TR222:3-TR223:7)

Mr. Merrill testified that the Union proposed the first two sentences of Section 1.01.2 and the Employer proposed the third sentence because the Employer did not want to agree "to do what is more than we can legally do under board law." (TR304:25-TR306:1) He testified that his understanding was that the third sentence "has to happen before the first two come into play." (TR4-14) On cross-examination, Mr. Merrill agreed that the Employer can set the terms and conditions, assuming no collective bargaining relationship exists, and nothing prevents the Employer from agreeing to allow the employees from Tacoma to transfer to Centralia and to maintain their terms and conditions of employment. (TR306:23-TR308:4)

Single Facility vs. Consolidation

The Employer contends that Section 1.01.2 applies only to the relocation of a single facility, not the consolidation of two or more facilities. The Employer contends the use of the singular "facility" in Section 1.01.2 shows that the Parties intended the provision to apply to the movement of a single facility. The Employer also points out that Section 1.01.1 references a "new wholesale grocery operation" and that reference is absent in Section 1.01.2. The Employer contends that Centralia is a new wholesale grocery operation because of the consolidation of facilities and changes in how the work is organized, managed and performed. (See Stipulation and see also J3, Article 16)

The Employer contends that the negotiations related to Section 1.01.2 focused only on the relocation of Safeway's Bellevue facility. Mr. Williams testified, however, that the Union

had concerns that other employers in the multi-employer group had antiquated facilities. Because of increasing real estate values in the Seattle area, the employers might find that relocation from the area would be necessary in order to find adequate space to build a new facility and the Union wanted to protect against that possible outcome. (TR295:12-19; TR252:14-TR255:2)

The Employer contends that Section 1.01.2 clearly does not apply to a complete consolidation of the Portland and Tacoma operations and Section 1.01.2 must be read to apply only to the movement of a single facility. The Employer contends that if the Parties intended Section 1.01.2 to apply to a consolidation, they would have said so in the contract. I am not persuaded that the language of Section 1.01.2 is as limited as the Employer contends. The title of the section is "Movement of Existing Facility" and the first sentence begins "In the event that the Employer moves an existing facility to any location within the jurisdiction of Joint Council of Teamsters No. 28..." The Union's goal during the negotiation of Section 1.01.2 was to allow the employees to follow the work to a new location and the language of Section 1.01.2 is consistent with that objective. The Employer is moving the existing Tacoma facility to a location within the jurisdiction of Joint Council 28.

The Employer contends that when SuperValu consolidated the Seattle and Tacoma warehouses in Tacoma, the Local 117 contract covering Seattle did not follow the employees to Tacoma. The Employer argues that this history shows that Section 1.01.2 does not apply to a consolidation. The record in this case, however, does not contain information on how the Tacoma contract compared to the Local 117 contract. Becoming subject to the terms in the Tacoma contract may have been acceptable to Local 117, thus the Union would not have had to invoke Section 1.01.2. The record does not clearly establish why Section 1.01.2 was not followed in this example.

The *Safeway* Decision

The Employer contends that this case begins and ends with the Board's recent decision in *Teamsters Local Union No. 206 (Safeway, Inc.)*, 368 NLRB No. 15 (2019). In that case, Safeway closed its Clackamas, OR distribution center and moved the operations to its Portland facility. Five unions represented separate units of employees in Clackamas (Teamsters 206, 305, 162, 555 and the IAM). Local 305 represented a wall to wall unit at the Portland facility. Local 206 insisted that its contract and the employees it represented follow the work to Portland. Local

206 relied on a contract provision essentially the same as Section 1.01.2 in this case. The employer insisted that employees transferring from Clackamas would be absorbed into the Local 305 wall to wall unit in Portland. The employer filed a charge against Local 206, which went to hearing before an ALJ and was ultimately appealed to the Board.

The analysis applied by the ALJ compares in many respects to the position the Union has taken in the present case. The ALJ wrote the following:

> Where merged bargaining units form a new operation and none of the competing unions have a sufficiently predominant majority, as has occurred here, an employer must continue to recognize and bargain with all of the unions involved, until the Board resolves the question concerning representation. *Matlock*, supra., at 251-252; *Innovative Communications Corp.*, 333 NLRB 665 (2001). Presumably, then, the status quo ante must be maintained until the Board steps in and resolves the question concerning representation. An issue then arises as to what occurs to the collective bargaining agreements that were in place at the time that the historical bargaining units were merged at PDC, creating a "new operation" and triggering a question concerning representation, as I have found occurred here. While *Matlock*, supra., at 251-252; *Innovative Communications Corp.*, supra., indicate that an employer must recognize and bargain separately with the various unions involved until the Board resolves the question concerning representation, I have found no Board case that directly addresses the issue as to the fate of the contracts in place. In light of the Board's long-standing policy of preserving the status quo ante in these types of circumstances however, it is reasonable to presume that at least initially, until the question concerning representation is resolved by the Board, <u>all</u> the collective bargaining agreements covering all of the merging bargaining units should be maintained in place. To hold otherwise would in essence mean that the Employer could unilaterally impose the initial hours, wages, and working conditions on all merging bargaining unit employees, an outcome that would arguably be destructive of their Section 7 rights and of the representational rights of the unions involved. (J2, p. 13)

Although the Union contends it has never sought recognition from the Employer at Centralia, and it does not seek to represent employees it has not previously represented, the result the Union seeks here is consistent with the ALJ's analysis. The Union contends that the Employer must preserve the status quo by maintaining the existing Local 117 terms in place until the question concerning representation gets resolved. Mr. Williams testified that this approach is what the Union negotiated for when the Parties added Section 1.01.2 to the Agreement. (TR214:25-TR215:15)

Although the Board ultimately affirmed the ALJ's dismissal of the charge against Local 206, the Board, in footnote 3 on page 1 of J2, ruled as follows:

> We reject the judge's conclusions regarding the Employer's current bargaining obligations at the PDC. Where, as here, a question concerning representation has been raised because the wholesale addition of a new group of employees has substantially changed the nature of an extant unit, the Board has held that "there can be no accretion...and no attendant duty to bargain" with a previous representative of a portion of the resultant employee complement [citations omitted] Accordingly, under the circumstances, the Employer has no duty to recognize and bargain with Local 305, Local 206, or any of the unions involved in this case pending resolution of the question concerning representation of the merged workforce at the PDC.

The question is whether the Board's decision specifically precludes the position the Union has taken here. The ALJ observed that he could find no case that "directly addresses the issue as to the fate of the contracts in place." He therefore relied on long-standing Board policy of preserving the status quo:

> ...it is reasonable to presume that at least initially, until the question concerning representation is resolved by the Board, all the collective bargaining agreements covering all of the merging bargaining units should be maintained in place.

The Board ruled that it rejected the ALJ's conclusions regarding the employer's bargaining obligations and stated that the employer had no duty to recognize and bargain with any of the unions involved pending resolution of the question concerning representation of the merged workforce.

Survival of Contractual Rights Following Movement of the Facility

The Union in the present case argues that even if the Agreement is "obliterated" by the consolidation of operations in Centralia, the Employer made an express promise in Section 1.01.2 to provide the employees with the opportunity to work at Centralia and to maintain the status quo of wages and benefits at least until majority status is determined. The Union argues that recognition in Centralia is separate from the issue of the promises made by the Employer concerning facility relocation. The Union argues that the law does not restrict the Employer from setting initial terms and conditions of employment at Centralia that allow employees from Tacoma to transfer to Centralia and to maintain the terms and conditions of employment provided in the Local 117 contract. The Union argues that the first two sentences of Section 1.01.2 constitute an express promise to do so. (TR306:23-TR308:4)

The Employer contends that no arbitration provision and no union security clause would exist for the transferred employees without a contract. The terms of the contract referenced in the first two sentences of Section 1.01.2, however, can reasonably be interpreted to mean the wages, hours, benefits and working conditions contained in the Agreement. Section 1.01.2 allows the employees to follow the work to the new location and avoid having to face a reduced standard of living to do so.

In addition, the Employer contends that payments could not be made to the Pension Trust Fund with no contract in place. (C16) Mr. Williams, however, testified, based on his experience as a Trustee of the Trust, that the Trust could approve continuation of contributions and benefits even though no contract was in place during a transition period. (TR229:9-TR230:14)

Findings of Fact

1. The grievance is substantively arbitrable. On March 18, 2019, the Employer advised the Union that it would not honor the terms of Section 1.01.2 of the Agreement. The Union filed a grievance contending that the Employer's refusal to follow Section 1.01.2 violated the Agreement. Subsequently, the Employer issued a WARN notice to the Union indicating that permanent layoffs would commence on September 28, 2019. (U13) The grievance raises an issue of contract interpretation. The fact that a question concerning representation may exist at the new facility in Centralia is a separate issue from this contract interpretation dispute and the representation issue is not subject to this arbitration.

2. The Union has not, as yet, demanded recognition as the exclusive bargaining representative of any employees at the Employer's Centralia facility.

3. The Agreement contains an express promise in Section 1.01.2 to apply the terms of the contract and afford all employees working under the terms of the Agreement at the Tacoma facility the opportunity to work at the Centralia facility under the same terms and conditions and without any loss of seniority or other contractual rights or benefits.

4. The Employer violated Section 1.01.2 of the Agreement when it refused to apply the terms of the contract and afford all employees working under the terms of the Agreement at the Tacoma facility the opportunity to work at the Centralia facility under the same terms and conditions and without any loss of seniority or other contractual rights or benefits pending resolution of the question concerning representation at Centralia.

5. As the appropriate remedy, the Employer shall:

a. Allow employees at the Tacoma facility to transfer to Centralia under the same terms and conditions that they have in Tacoma.

b. Reinstate, make whole and also allow any employees laid off in the first wave(s) of layoffs in Tacoma to transfer to Centralia under the same terms and conditions that they had in Tacoma.

//

//

//

IN THE MATTER OF THE ARBITRATION BETWEEN

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 117 & LOCAL 313, UNION,	ARBITRATOR'S AWARD
and	FACILITY RELOCATION TO CENTRALIA GRIEVANCE
UNFI/SUPERVALU, INC., EMPLOYER.	FMCS NO. 190430-06670

For the reasons set forth in the Opinion that accompanies this Award, the grievance must be and it is sustained. The Employer shall:

1. Allow employees at the Tacoma facility to transfer to Centralia under the same terms and conditions that they have in Tacoma, and;
2. Reinstate, make whole and also allow any employees laid off in the first wave(s) of layoffs in Tacoma to transfer to Centralia under the same terms and conditions that they had in Tacoma.

In accord with Article 23.14 of the Agreement, my fee shall be split equally between the Union and the Employer

I shall retain jurisdiction for sixty (60) days from today for the sole purpose of aiding the Parties in the implementation of the remedy.

Dated this 7th Day of October 2019

Joseph W. Duffy
Arbitrator